

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	File No. EB-10-SE-054
)	NAL/Acct. No. 201132100033
Marshall Amplification PLC)	FRN 0020941753
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 29, 2011**Released: August 30, 2011**

By the Acting Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Marshall Amplification PLC (“Marshall”) apparently liable for a forfeiture in the amount of seven thousand two hundred dollars (\$7,200) for its apparent willful and repeated violation of section 302(b) of the Communications Act of 1934, as amended (“Act”),¹ and sections 2.803(a)(2) and 15.105(b) of the Commission’s rules (“Rules”).² The noted apparent violations involve Marshall’s marketing of a Class B digital audio radio frequency device in the United States without providing mandatory disclosures to consumers in the device’s user manual.

II. BACKGROUND

2. On July 12, 2010, the Spectrum Enforcement Division (“Division”) of the Enforcement Bureau issued a letter of inquiry³ to Marshall in response to a complaint that Marshall was marketing⁴ in the United States a Class B digital⁵ audio radio frequency (“RF”) device without including in the

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. §§ 2.803(a)(2), 15.105(b).

³ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Victoria Marshall, Managing Director, Marshall Amplification PLC (July 12, 2010) (“LOI”).

⁴ Section 2.803(e)(4) of the Rules defines “marketing” as including the “sale or lease, or offering for sale or lease, including advertising for sale or lease, or importation, shipment, or distribution for the purpose of selling or leasing or offering for sale or lease.” 47 C.F.R. § 2.803(e)(4).

⁵ Section 15.3(i) of the Rules defines a “Class B digital device” as “a digital device that is marketed for use in a residential environment notwithstanding use in commercial, business and industrial environments.” 47 C.F.R. § 15.3(i). Section 15.3(k) of the Rules defines a “digital device” as “an unintentional radiator (device or system) that generates and uses timing signals or pulses at a rate in excess of 9,000 pulses (cycles) per second and uses digital techniques.” 47 C.F.R. § 15.3(k).

⁶ Section 2.801 of the Rules defines “radio frequency device” as “any device which in its operation is capable of emitting radio-frequency energy by radiation, conduction, or other means.” 47 C.F.R. § 2.801.

device's user manual the required consumer disclosure language specified in section 15.105(b) of the Rules. The LOI directed Marshall to respond to a series of questions regarding its apparent marketing of Class B digital RF devices – specifically, several models of amplifiers. In its July 28, 2010 response to the Division's LOI,⁷ Marshall stated that it had verified all of its Class B digital RF devices prior to marketing the devices in the United States.⁸ Marshall admitted, however, that beginning September 26, 2009, it had marketed in the United States one of its amplifier models, model number MG2FX (“model MG2FX”), without including in the device's user manual the consumer disclosure language specified in section 15.105(b) of the Rules.⁹ Marshall also stated that as of the date of its LOI Response, relevant personnel had submitted an internal request to change the user manual for model MG2FX to include the requisite consumer disclosure language.¹⁰

3. The Division issued subsequent inquiries to Marshall on March 21, 2011 and April 18, 2011, seeking additional information regarding its apparent marketing of several additional models of Class B digital RF devices and its progress regarding the correction of the user manual for model MG2FX to include the requisite consumer disclosure language.¹¹ Marshall responded to these subsequent inquiries on March 29, 2011 and May 12, 2011, respectively.¹² In its May 12, 2011 Response, Marshall explained that “shortly after” September 7, 2011, it reprinted the manuals for the MG2FX model with the requisite consumer disclosure language included therein.¹³

III. DISCUSSION

A. Marketing of Devices without the Required Consumer Disclosure

4. Pursuant to section 302(b) of the Act “[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices which fail to comply with regulations promulgated pursuant to this section.” For a device subject to verification, section 2.803(a)(2) of the Commission's implementing regulations provides in pertinent part that:

Except as provided elsewhere in this section, no person shall sell or lease, or offer for sale or lease (including advertising for sale or lease), or import, ship, or distribute for the purpose of selling or leasing or offering for sale or lease, any radio frequency device unless ... [i]n the case of a device that is not required to have a grant of equipment

⁷ See Letter from Paul Tait, Marshall Amplification PLC, to Marlene K. Dortch, Secretary, Federal Communications Commission (July 28, 2010) (“LOI Response”).

⁸ See *id.* at 4. See also 47 C.F.R. § 15.101(a) (requiring authorization of Class B digital devices, other than Class B computer peripherals, through the verification process).

⁹ See LOI Response at 11.

¹⁰ See *id.*

¹¹ See Letter from Ricardo M. Durham, Acting Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Paul Tait, Marshall Amplification PLC (March 21, 2011); Letter from John D. Poutasse, Acting Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Paul Tait, Marshall Amplification PLC (April 18, 2011).

¹² See Letter from Paul Tait, Marshall Amplification PLC, to Nissa Laughner, Attorney Advisor, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (March 29, 2011); Letter from Paul Tait, Marshall Amplification PLC, to Nissa Laughner, Attorney Advisor, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (May 12, 2011) (“May 12, 2011 Response”).

¹³ May 12, 2011 Response at 1.

authorization issued by the Commission, but which must comply with specific technical standards prior to use, such device also complies with all applicable administrative (including verification of the equipment or authorization under a Declaration of Conformity, where required), technical, labeling and identification requirements specified in this chapter.

5. Under section 15.101 of the Rules,¹⁴ certain Class B digital devices, such as digital audio music devices marketed to the general public, must be authorized in accordance with the Commission's verification procedures prior to marketing, in order to minimize the threat that their operation would result in harmful interference to authorized devices. Specifically, Class B digital devices must be tested and verified as compliant with the conducted emission limits and radiated emission limits set forth in sections 15.107 and 15.109 of the Rules.¹⁵ In addition, such devices must be labeled as specified in section 15.19(a)(3) of the Rules.¹⁶ Finally, under section 15.105(b) of the Rules,¹⁷ the manual for a Class B digital device must include a warning to consumers of these unlicensed devices of the potential for interference to other radio communications and provide a list of some steps that could possibly eliminate the interference. Specifically, section 15.105(b) of the Rules states that the manual for Class B digital devices must include the following consumer disclosure language:

This equipment has been tested and found to comply with the limits for a Class B digital device, pursuant to part 15 of the FCC Rules. These limits are designed to provide reasonable protection against harmful interference in a residential installation. This equipment generates, uses and can radiate radio frequency energy and, if not installed and used in accordance with the instructions, may cause harmful interference to radio communications. However, there is no guarantee that interference will not occur in a particular installation. If this equipment does cause harmful interference to radio or television reception, which can be determined by turning the equipment off and on, the user is encouraged to try to correct the interference by one or more of the following measures:

- Reorient or relocate the receiving antenna.
- Increase the separation between the equipment and receiver.
- Connect the equipment into an outlet on a circuit different from that to which the receiver is connected.
- Consult the dealer or an experienced radio/TV technician for help.

6. In its LOI Response, Marshall admitted to marketing the model MG2FX in the United States without including the requisite consumer disclosure language in the model's user manual.¹⁸ Accordingly, we find that Marshall apparently marketed a Class B digital audio RF device without

¹⁴ 47 C.F.R. § 15.101.

¹⁵ 47 C.F.R. §§ 15.107, 15.109.

¹⁶ 47 C.F.R. § 15.19(a)(3).

¹⁷ 47 C.F.R. § 15.105(b).

¹⁸ See LOI Response at 11.

including the requisite consumer disclosure language in the device's user manual in willful¹⁹ and repeated²⁰ violation of section 302(b) of the Act and sections 2.803(a)(2) and 15.105(b) of the Rules.

B. Proposed Forfeiture

7. Section 503(b) of the Act authorizes the Commission to assess a forfeiture for each willful or repeated violation of the Act or any Rule, regulation, or order issued by the Commission under the Act.²¹ Under section 1.80(b)(3) of the Rules,²² we may assess an entity that is neither a common carrier, broadcast licensee or cable operator a forfeiture of up to \$16,000 for each violation or each day of a continuing violation, up to a statutory maximum forfeiture of \$112,500 for any single continuing violation. In exercising such authority, we are required to take into account "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."²³

8. Pursuant to the Commission's *Forfeiture Policy Statement*²⁴ and section 1.80 of the Rules,²⁵ the base forfeiture amount for the marketing of unauthorized equipment is seven thousand dollars (\$7,000). This base forfeiture, however, is subject to adjustment, either upward or downward. We note that the Commission typically imposes the seven thousand dollar (\$7,000) base forfeiture amount for the marketing of devices that are not compliant with applicable technical requirements of the Rules or that are not authorized by an equipment authorization.²⁶ Because adherence to the Commission's authorization

¹⁹ Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the section 503(b) context. See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 ¶ 5 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*"); see also *Telrite Corporation*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 7231, 7237 ¶ 12 (2008); *Regent USA*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 10520, 10523 ¶ 9 (2007) (forfeiture paid); *San Jose Navigation, Inc.*, Forfeiture Order, 22 FCC Rcd 1040, 1042 ¶ 9 (2007), *consent decree ordered*, Order and Consent Decree, 25 FCC Rcd 1494 (2010) ("*San Jose*").

²⁰ Section 312(f)(2) of the Act, which also applies to forfeitures assessed under section 503(b) of the Act, provides that "[t]he term 'repeated,' ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2). See *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 9 (2001), *forfeiture ordered*, Forfeiture Order, 17 FCC Rcd 22626 (2002) (forfeiture paid); *Southern California*, 6 FCC Rcd at 4388 ¶ 5.

²¹ 47 U.S.C. § 503(b).

²² 47 C.F.R. § 1.80(b)(3).

²³ 47 U.S.C. § 503(b)(2)(E). See also 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures.

²⁴ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

²⁵ 47 C.F.R. § 1.80.

²⁶ See, e.g., *Behringer USA, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 1820, 1827 ¶ 21 (2006) (proposing a \$7,000 base forfeiture for each of the unauthorized models marketed), *forfeiture ordered*, Forfeiture Order, 22 FCC Rcd 1051 (2007) (forfeiture paid); *Samson Technologies, Inc.*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 4221, 4224-25 ¶ 9 (2004) (proposing a \$7,000 base forfeiture for the marketing of (continued...))

procedures ensures that devices meet the required technical standards, we have found previously that a downward adjustment of the base forfeiture amount from \$7,000 to \$4,000 is warranted for the marketing of devices that have been authorized, but have been marketed without the required consumer disclosures.²⁷ In this case, however, we must also consider Marshall's ability to pay a forfeiture.²⁸ As the Commission made clear in the *Forfeiture Policy Statement*, large or highly profitable entities, such as Marshall,²⁹ should expect forfeitures higher than those reflected in the base amounts.³⁰

9. Given the totality of the circumstances, including Marshall's history of overall compliance, and consistent with the *Forfeiture Policy Statement*, we propose a forfeiture of seven thousand two hundred dollars (\$7,200) against Marshall for the marketing of a Class B digital audio RF device without the mandatory disclosures to consumers in the device's user manual in apparent willful and repeated violation of section 302(b) of the Act and sections 2.803(a)(2) and 15.105(b) of the Rules.

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equipment not compliant with the Commission's radiated emissions requirements in section 15.109(a) of the Rules), *consent decree ordered*, Order and Consent Decree, 19 FCC Rcd 24509 (2004).

²⁷ See *Multi-Tech Systems, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 17824, 17827 ¶ 8 (Enf. Bur., Spectrum Enf. Div. 2008) (forfeiture paid); see also *Cellphone-Mate, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 8988, 8990 ¶ 5 (Enf. Bur., Spectrum Enf. Div. 2010), *response pending*; *Wireless Extenders, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 8983, 8985 ¶ 5 (Enf. Bur., Spectrum Enf. Div. 2010); *Proxim Wireless Corporation*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 1145, 1149 ¶ 12 (Enf. Bur., Spectrum Enf. Div. 2009) (forfeiture paid); *Ryzex Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 878, 884 ¶ 18 (Enf. Bur., Spectrum Enf. Div. 2008), *response pending*; *DBK Concepts, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 2870, 2875 ¶ 19 (Enf. Bur., Spectrum Enf. Div. 2008), *response pending*.

²⁸ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures. See also, e.g., *Uniden America Corporation*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 13538, 13542 ¶12 (Enf. Bur., Spectrum Enf. Div. 2009) (downwardly adjusting a proposed base forfeiture of \$31,000 to \$26,000 based on a history of overall compliance); *ABS-CBN International, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 11018, 11021 ¶12 (Enf. Bur., Spectrum Enf. Div. 2008) (forfeiture paid) (downwardly adjusting a proposed base forfeiture of \$6,500 to \$5,200 based on a history of overall compliance); *Ramsey Electronics, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 458, 463 ¶12 (Enf. Bur., Spectrum Enf. Div. 2006) (forfeiture paid) (downwardly adjusting a proposed base forfeiture of \$24,000 to \$21,000 based on a history of overall compliance).

²⁹ Marshall has reported annual gross revenues in excess of \$25,000,000. See *ICC Financial Analysis Reports*, August 10, 2011.

³⁰ Specifically, the Commission stated:

[O]n the other end of the spectrum of potential violations, we recognize that for large or highly profitable communication entities, the base forfeiture amounts ... are generally low. In this regard, we are mindful that, as Congress has stated, for a forfeiture to be an effective deterrent against these entities, the forfeiture must be issued at a high level.... For this reason, we caution all entities and individuals that, independent from the uniform base forfeiture amounts ..., we intend to take into account the subsequent violator's ability to pay in determining the amount of a forfeiture to guarantee that forfeitures issued against large or highly profitable entities are not considered merely an affordable cost of doing business. Such large or highly profitable entities should expect in this regard that the forfeiture amount set out in a Notice of Apparent Liability against them may in many cases be above, or even well above, the relevant base amount.

Forfeiture Policy Statement, 12 FCC Rcd at 17099-100.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.311 and 1.80 of the Commission's rules,³¹ Marshall Amplification PLC, is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seven thousand two hundred dollars (\$7,200) for marketing a Class B digital audio radio frequency device without including the requisite consumer disclosure language in the device's user manual in apparent willful and repeated violation of section 302(a) of the Act and sections 2.803(a)(2) and 15.105(b) of the Rules.

11. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules, within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Marshall Amplification PLC, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Marshall Amplification PLC will also send electronic notification to Nissa.Laughner@fcc.gov and Neal.McNeil@fcc.gov on the date said payment is made.

13. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.80(f)(3) and 1.16 of the Rules.³² The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

³¹ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80.

³² 47 C.F.R. §§ 1.80(f)(3), 1.16.

15. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by Registered mail and First Class mail, to Paul Tait, Marshall Amplification PLC, Denbigh Rd., Bletchley Milton Keynes MK1 1DQ, United Kingdom.

FEDERAL COMMUNICATIONS COMMISSION

John D. Poutasse
Acting Chief
Spectrum Enforcement Division
Enforcement Bureau